



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1995

Mr. John F. Olson
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR95-1273

Dear Mr. Olson:

On behalf of the City of Friendswood, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 36199.

The City of Friendswood received an open records request for the roster of senior citizens who participate in programs at the city's Senior Citizens Center. You contend that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with title 40, section 270.1 of the Texas Administrative Code. Section 270.1, title 40 of the Texas Administrative Code is a rule adopted by the Texas Department of Aging, which attempts to make confidential all information about or obtained from clients and held by the Senior Citizens Center.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section protects information specifically made confidential by statute. Generally, however, a governmental body may not make information confidential by agency rule. Open Records Decision No. 527 (1989) at 6. A governmental body must have a specific statutory grant of authority to make information confidential by agency rule; general rule-making authority is not sufficient. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In this case, we have not found any specific statutory authority permitting the Department of Aging to make information confidential by rule. According to the Department of Aging, section 270.1 of title 40 was proposed and adopted under chapter 101 of the Human Resources Code. See Tex. Dep't Aging, 19 Tex. Reg. 1820 (1994).

Section 101.021 of the Human Resources Code gives the Department of Aging general authority to adopt rules governing the functions of the department. This rule-making authority is not specific enough to permit the Department of Aging to make information confidential by rule. Furthermore, we could not find any other specific authority to make information confidential by rule either in state law or in the federal law governing the programs administered by the Department of Aging. If the Department of Aging has no specific statutory authority to make information confidential by rule, you may not withhold the requested information under section 552.101. If, on the other hand, the Department of Aging does have specific statutory authority to make information confidential by rule, you must not release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Margaret A. Roll". The signature is fluid and cursive, with the first name "Margaret" being more prominent.

Margaret A. Roll
Assistant Attorney General
Open Records Division

MAR/rho

Ref.: ID# 36199

Enclosures: Submitted documents

cc: Reverend Oral Yover
15811 Campfire Road
Friendswood, Texas 77546
(w/o enclosures)